BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF ST. REGIS PAPER COMPANY, Appellant, v. PUGET SOUND AIR POLLUTION CONTROL AGENCY and STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY, Respondents.	PCHB No. 82-135 FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This matter, the appeal of Civil Penalty No. 5629 for emissions allegedly in violation of Chapter 173-405 WAC pertaining to kraft pulping mills came on for formal hearing before the Pollution Control Hearings Board on February 15, 1983, at Lacey, Washington. Seated for and as the Board were Gayle Rothrock, Chairman, and Lawrence J. Faulk, Member. William A. Harrison, Administrative Law Judge, presided.

Appellant appeared by its attorney, Michael R. Thorp. Respondent appeared by its attorney Keith D. McGoffin. Respondent-Intervenor

Department of Ecology was represented by Wick Dufford, Assistant Attorney General. Court reporter Gene Barker recorded the proceedings.

Witnesses were sworn and testified. Exhibits were examined. From testimony heard or read and exhibits examined, the Board makes these

FINDINGS OF FACT

I

Appellant St. Regis Paper Company filed a notice of appeal with the Board and did not request a formal hearing. Respondent PSAPCA, pursuant to RCW 43.21B.230, filed its notice of request for a formal hearing but subsequently withdrew the request. Prior to the commencement of the hearing, appellant, pursuant to WAC 371-08-100, moved to amend its notice of appeal to request a formal hearing. The motion was granted.

II

Appellant owns and operates a kraft pulping mill in Tacoma, Washington. In manufacturing wood pulp, appellant operates on a continuous basis, periodically shutting down production for routine maintenance and equipment repair. This controversy centers around the start-up procedure employed after a routine shutdown in July 1982.

III

On July 12, 1982, at approximately 9:25 a.m., respondent's inspector, while on routine patrol, observed a brown smoke emission from the No. 4 recovery furnace at appellant's mill. The inspector observed the emission for fifteen and one-half consecutive minutes of seventeen minutes, with opacity readings recorded every fifteen

seconds ranging between forty and one hundred percent opacity. The inspector also observed and recorded emissions from the by-pass stack for the hog fuel boilers Nos. 3, 4, and 5.

While the inspector was making his observations, the radio dispatcher from the Agency advised him that a Lab Supervisor employed by the appellant had contacted the Agency and had given notice of the startup of the No. 4 recovery furnace.

The inspector contacted an official at the mill at approximately 11:05 a.m. and issued to the appellant two Notices of Violations, No. 18081 (for the No. 4 recovery furnace) and No. 18082 (for hog fuel boilers Nos. 3, 4, and 5). Notice of Violation No. 18081 was issued pursuant to WAC 173-405-040(10) and is the subject of this appeal.

After a conversation with appellant's Technical Superintendent, the inspector was under the impression that the introduction of cold fuel oil into the recovery furnace was the cause of the emission. This was included in his report and ultimately concurred with by representatives of the Department of Ecology.

IV

Appellant stipulates that it caused the emission in question, and that the opacity exceeds the limits of WAC 173-405-040(10) cited by respondent. Appellant contends that the emission was excusable under WAC 173-405-077 which allows emissions in excess of the state standard during abnormal operations or upset conditions.

V

Appellant's start-up procedure is a continuous one whereby each

piece of equipment is brought "on line" at various stages during the process. The normal start-up mode is initiated with hog fuel boilers Nos. 2 and 5. These boilers have electrically driven fans and thus are able to start in the absence of any steam. Once hog fuel boilers Nos. 2 and 5 are started, steam is generated which is used to start hog fuel boilers Nos. 3 and 4. The steam from the four hog fuel boilers is used to pre-heat the oil used in starting No. 6 power boiler and Nos. 3 and 4 recovery furnaces. The oil is heated and stays hot by the use of a circulation system. When the oil is sufficiently heated to 190°F, the oil is introduced into the No. 6 power boiler and that boiler is brought on line. Interlock devices prevent introducing oil into the No. 6 power boiler at something less than 190°F. As the production schedule requires, this same oil is introduced in Nos. 3 and 4 recovery furnaces, and they are brought on line. Similar interlock devices are used to prevent the introduction of insufficiently heated oil into the recovery furnaces. Once all the equipment is brought on line, normal production may begin.

VI

Appellant utilizes an electrostatic precipitator to cleanse the exit gases from the No. 4 recovery furnace. As soon as the precipitator is warmed to operating temperature (275°F), the power is placed on the unit to control emissions. Until this temperature is achieved, emissions can occur, especially during the early stages of warmup of the system. Appellant is unaware of any more effective way to start up a recovery furnace. The procedure that they use is the

normal and accepted practice in the pulping industry.

VII

The Agency was notified at 9:03 a.m. on July 11, 1982, that Nos. 2 and 5 hog boilers were being lit off in order to initiate the start up of the mill. At 1:30 a.m., July 12, 1982, the Agency was notified that No. 6 power boiler was being lit off. Further notification was received at 4:35 a.m. that No. 1 power boiler was being lit off. At 9:40 a.m. the Agency was notified that oil was being fired in No. 4 recovery furnace beginning at 9:23 a.m. It is the policy of the appellant to notify the Agency whenever a piece of equipment is about to be brought on line.

The notification procedure used for the No. 4 recovery furnace involved a call from the equipment operator to a Lab Supervisor who, in turn, called the Agency. This procedure had been used by the appellant for four or five years. Appellant adopted a new notification procedure in August 1982, whereby the equipment operator calls the Agency directly.

VIII

Emissions occur primarily because the temperature of the furnace itself; i.e., the refractory material inside the furnace has not come up to temperature. The temperature of the duct work and stack will cause variations in the draft of the furnace and ultimately affect the combustion within it. It is the function of the licensed operator to adjust the air within the furnace in order to avoid an emission. The introduction of more air dilutes the emission and the plume opacity

decreases. It is possible to start up the recovery furnaces in a kraft mill without air pollution devices and without opacity violations.

IX

Appellant contends, and the Board finds, that the oil was sufficiently heated and was not the cause of the emission. Appellant is not sure what ultimately caused the emission. A possible cause was worn oil tips in the oil guns which produced an inappropriate oil/air mixture and incomplete combustion. The worn oil tips were discovered some months following the Notice of Violation and after the appellant submitted a full report of the incident to the Agency. The discovery was never reported to the Agency.

X

On July 14, 1982, the Agency, pursuant to WAC 173-405-077, requested a full written report of the known causes and the preventative measures to be taken to prevent the recurrence of a similar emission. On July 22, 1982, appellant filed the requested written report inviting further questions regarding the subject. No further questions were asked, nor was appellant informed that its report was not adequate prior to assessment of the penalty at issue.

XI

Civil Penalty No. 5629 in the amount of $250 was issued to appellant on September 22, 1982.

XII

Feeling aggrieved by the decision of the Agency, appellant filed

an appeal of the order with this Board and the matter came to formal hearing.

XIII

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board comes to the following

CONCLUSIONS OF LAW

I

The Board has jurisdiction over the persons and the subject matter of this proceeding. RCW 43.21B.110.

II

An appellant may request a formal hearing before the Board by so stating in the Notice of Appeal. If the notice does not so state, the hearing is conducted on an informal basis. The air pollution authority may, within ten days from the date of its receipt of the notice of appeal, request a formal hearing. RCW 43.21B.230. In this case, the Agency did request a formal hearing but later withdrew the request.

After the scheduling of the first conference, the appellant may amend its Notice of Appeal on such terms as the presiding officer may prescribe. WAC 371-08-100. At the time of the hearing, appellant moved to amend its Notice of Appeal to request a formal hearing and the motion was granted.

III

Notice of Violation No. 18081 and Civil Penalty No. 5629 were

issued to the appellant for violation of emission standards:

> No person shall cause or allow the emission of a plume from any kraft recovery furnace or lime kiln, or other source which has an average opacity greater than thirty-five percent for more than six consecutive minutes in any sixty minute period...

WAC 173-405-040(10).

This regulation provides opacity emission standards for <u>each</u> kraft recovery furnace. Appellant has stipulated that it caused the emission in question and that the opacity standard was exceeded.

IV

Appellant contends that the emission should be excused because the emission occured during the startup of the mill.

> (1) Upset conditions which may result in emissions in excess of standards set by this chapter must be reported promptly to the department or appropriate air pollution control authority. An abnormal operation such as a startup or shutdown operation which can be anticipated must be reported in advance of the occurrence of the abnormal operation if it may result in emissions in excess of standards. Each kraft mill shall upon the request of the department or its designated agency, submit a full written report, including the known causes and the preventive measures to be taken to prevent a recurrence.
>
> (2) any period of excess emissions is presumed to be a violation unless and until the owner or operator demonstrates and the department finds that:
>
> (a) The incident was reported as required; and
>
> (b) Complete details were furnished the department or agency; and
>
> (c) Appropriate remedial steps were taken to minimize excessive emissions and their impact on

ambient air quality; and

(d) The incident was unavoidable.

(3) If the conditions of (2) above are met, the incident is excusable and a notice of violation will not be issued.

(4) If any of the conditions of (2) above are not met, the incident is not excusable and a notice of violation will be issued and a penalty may be assessed.

(5) For the department to find that an incident of excess emissions is unavoidable, the kraft mill must submit sufficient information to demonstrate the following conditions were met:

(a) The process equipment and the air pollution control equipment were at all times maintained and operated in a manner consistent with minimized emissions.

(b) Repairs or corrections were made in an expeditious manner when the operator knew or should have known that emission limitations were being or would be exceeded.

(c) The incident is not one in a recurring pattern which is indicative of inadequate design, operation or maintenance.

WAC 173-405-077.

V

It follows from WAC 173-405-040(10) and 173-405-077 that an upset condition that may result in emissions exceeding the standard must be reported promptly and in advance for <u>each</u> Kraft recovery furnace. There is a separate emission standard for each furnace, thus, a separate report of upset abnormal conditions is required.

It is the appellant's policy to notify the Agency before each piece of equipment is brought on line. Number 4 recovery furnace was fired at 9:23 a.m., July 12, 1982. The emission occurred at

approximately 9:25 a.m. Appellant reported the firing at 9:40 a.m. Because of this delay, the startup was not reported promptly and in advance as required, and the Notice of Violation was properly issued. All the other requirements and conditions of WAC 173-405-077 were met.

VI

Appellant has raised the issue concerning the legality of the thirty-five percent opacity standard set out in WAC 173-405-040(10). The Supreme Court of Washington upheld a similar opacity standard and the use of the Ringelmann Smoke chart as a proper measurement of air pollution.

> An ordinance to be void for unreasonableness must be plainly and clearly unreasonable. Although the "opacity" standard may not detect all of the air contaminants which pollute the air, we cannot say that it is not a reasonable means by which to detect some of the contaminating particles which smoke contains. It is no defense that the "opacity" standard does not regulate all air contamination but permits some emissions to go unpunished since a law designed to prevent one evil is not void because it does not prevent another. Similarly, while it is true that the Ringelmann Smoke Chart measures coloration and not opacity, it does not necessarily follow that the chart may not be reasonably used as a basis for determining opacity. The Ringelmann Smoke Chart has been widely accepted throughout the United States as a measurement of air pollution by both legislatures and courts, and we find ourselves in agreement with the wisdom of this acceptance.

Sittner v. Seattle, 62 Wn. 2d 834, 384, P.2d 859 (1963).

VII

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters this

ORDER

Notice of Violation No. 18081 was properly issued and Civil Penalty No. 5629 in the amount of $250 is affirmed.

DONE this 20th day of April, 1983, at Lacey, Washington.

POLLUTION CONTROL HEARINGS BOARD

Gayle Rothrock
GAYLE ROTHROCK, Chairman

Lawrence J. Faulk
LAWRENCE J. FAULK, Member

David Akana
DAVID AKANA, Lawyer Member